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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,251	08/10/2001	Kevin J. Zwaert	MBHB 00-556-A	5656

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EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 03/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/928,251

Applicant(s)

ZWAERT ET AL.

Examiner

David J. Walczak

Art Unit

3751



--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

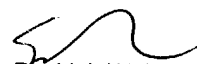
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


David J. Walczak
Primary Examiner
Art Unit: 3751

The Applicant contends that the Coombs reference is not applicable against the claims since said reference does not disclose a resilient container. Specifically, the Applicant contends that the Examiner has ignored half of the cited definition and "must use the entire definition and not just the portion of the definition that supports the Examiner's rejection" and further contends that Coombs does not disclose a container that can withstand shock "without permanent deformation". The Examiner maintains, however, that the collapsible tube disclosed by Coombs defines a resilient container. The cited definition of resilient is "capable of withstanding shock without permanent deformation or rupture" and the collapsible tube disclosed by Coombs can certainly withstand shock without permanent deformation or rupture, i.e., a slight squeezing of the tube (i.e. a "shock") would not rupture the tube and, since the tube is made from a flexible material, the tube would not be "permanently" deformed, i.e., the tube is capable of being flexed back into its original shape. Further, MPEP 2111.01 states that the words of a claim must be given their plain meaning unless the Applicant has provided a "clear" definition in the specification. The specification does not contain a "clear" definition of "resilient". The specification describes several ways in which the container may be filled, not all of which require the container to return to their original shape after squeezing. Further, the specification indicates that the container "may" be made from material that can be squeezed to remove air so that it may be filled with liquid and that the container is "preferably" made of specific materials (page 7, lines 23-29). Such broad language does not constitute a "clear" definition. In conclusion, since the container in the Coombs reference meets the dictionary definition of "resilient" and the specification has not "clearly" defined the term "resilient", the claims stand rejected as per the Final Rejection.